

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Michael Christopher MARTIN, et al. Conf. No. 4861
Appln. No. : 09/846,568 Group Art unit: 2154
Filed : May 1, 2001 Examiner: J. Chang
For : **METHOD FOR ADAPTING AN INTERNET WEB SERVER TO SHORT-TERM CHANGES IN DEMAND**

**RESPONSE TO THE NOTICE OF NON-COMPLIANT APPEAL BRIEF DATED
NOVEMBER 13, 2007**

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Window, Mail Stop Appeal Brief-Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Sir:

In the Notice of Non-compliant Appeal Brief mailed on November 13, 2007, it was asserted that the Supplemental Appeal Brief filed on August 13, 2007 did not contain the required "Summary of the claimed subject matter" for each separately argued dependent claim consistent with Rule 41.37(c)(1)(v). Appellant respectfully disagrees and requests withdrawal of the Notice.

Rule 41.37(c)(1)(v) specifically provides:

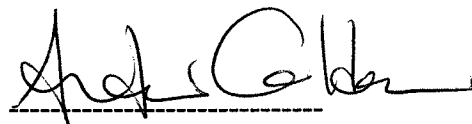
(v) Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

As is clear from the above-noted language, an Appeal Brief requires (1) “[a] concise explanation of the subject matter defined in each of the independent claims involved in the appeal ...” (emphasis added), and (2) an identification of “the structure, material, or acts described in the specification as corresponding to each claimed function” of “every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph “ for “each independent claim involved in the appeal and for each dependent claim argued separately ...” (emphasis added). There is no requirement to provide any concise explanation for any separately argued dependent claim. Moreover, unless a separately argued dependent claim recites means plus function or step plus function language, there is no requirement to identify the structure for performing such function for such a dependent claim.

Since none of the claims on Appeal recite any means plus function or step plus function language, much less, the separately argued dependent claims, Applicant has fully complied with Rule 41.37(c)(1)(v) by merely providing a concise explanation for only the independent claims on Appeal.

Appellant therefore respectfully requests withdrawal of the Notice for the above-noted reasons.

Respectfully submitted,
Michael Christopher MARTIN, et al.

A handwritten signature in black ink, appearing to read "Andrew M. Calderon", written over a horizontal dashed line.

Andrew M. Calderon
Reg. No. 38,093

December 13, 2007
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
703-716-1191
(703) 716-1191